

Written Testimony of Jon Bennion from the Montana Chamber
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Wrongful Discharge & HB 513

History

In 1987, the Montana Legislature led the country by codifying the rights and responsibilities of employers and employees with regard to the termination of employment. No other state has yet followed Montana's departure from the historical principle known as "Employment at Will." The Montana law was the legislative reaction to more than a half decade of case law by the Montana Supreme Court and state district courts that had found more and more terminations to be in violation of the then existent employment at will rules.

Up until 1987, Montana Employers were being subjected to expensive settlements of cases because of the ambiguity of the Good Faith Standard, which led to passage of the Montana Wrongful Discharge from Employment Act. It attempted to balance the interests of employees who wanted to have a valid business reason for being terminated against the rights of employers to manage their workforce. The compromise resulted in employers giving up what remained of the eroded concept of employment at will in return for protections against the multi-million dollar settlements that could put the employer out of business.

The legislative compromise resulted in employers being prohibited from discharging employees without a valid business reason, for terminations that would violate the employer's written personnel policies or that would constitute retaliation against employees that tried to exercise a legally protected right.

Benefits of Revising Wrongful Discharge

Most states have laws or court-made case law that allows various ways for terminated employees to sue, but few have so open-ended an opportunity as Montana law allows. It is rare for other states to allow a terminated employee to contest in court whether the employer accurately judged the terminated employee's performance or business need. As a result, businesses reviewing the Montana legal climate quickly learn that our law in this regard is different than surrounding states and much more problematic to employers. It appears that this system is skewed in favor of the employee.

The law in its current form is a significant disincentive to outside businesses when comparing the legal climate they face in Montana versus Wyoming, the Dakotas, or Idaho. But merely repealing the law would return Montana to the old court made rules and that would be a disaster for Montana employers—suits for anything, unlimited damages, etc. Revision, not repeal, is the solution.

To revise our current situation would take a concerted effort and research by many agencies and organizations, but given the consequences of out-of-state businesses staying away from developing Montana facilities and/or considering relocation to Montana, it would be well worth the effort.

Drawbacks of Revising Wrongful Discharge

In return for backing the Wrongful Discharge Act, employers gained some important protections. Punitive and compensatory damages were prohibited in most situations of wrongful discharge. Damages were capped at an amount not to exceed four years wages plus benefits and interest. Employers also gained a requirement that discharged employees attempt to mitigate their wage losses. Finally, in addition to an arbitration of claims procedure, employers gained an opportunity to review a discharged employee's case before the case is filed in district court. All an employer is obligated to do is to furnish a discharged employee with a copy of any existing "grievance" procedure within seven days of the date of discharge. If the employee does not initiate and exhaust the procedure within the time lines established by the grievance procedure, courts will generally dismiss the case with prejudice.

Wrongful Discharge has given employers a considerably greater degree of protection than they would have under the constantly evolving employment at will arena. Wrongful discharge cases are far fewer in number than they were before the law was enacted and those that are successful are for much smaller amounts of money than was true prior to 1987. While Montana is the only state with such a law and that may serve as a minor deterrent to companies seeking to relocate in Montana, a review of the law and its application will reveal that the law has achieved its goal of limiting wrongful discharge cases both in number and cost.

Montana Chamber Position

Any attempt to repeal or erode employer protections from the Wrongful Discharge Act should be vigorously fought. Any such action would violate the compromise worked out when the Act was first passed and send us back to the days where the courts were already trending towards "just cause" standards in the common law.

If the Legislature is interested in repealing Wrongful Discharge, it must provide new statutory language to give guidance to the courts on employment at will. The Legislature should also retain the caps on damages against employers.